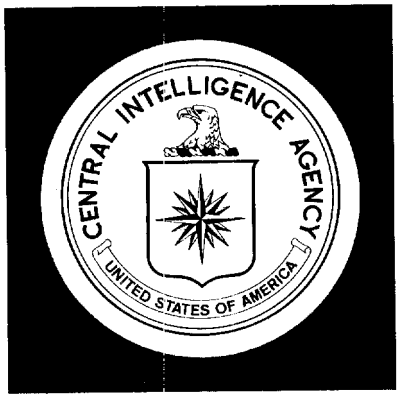

PROPOSED LEGISLATION

UNAUTHORIZED DISCLOSURE OF

INTELLIGENCE SOURCES AND METHODS

Approved For Release 2006/10/20 : CIA-RDP78B02992A000100010025-9

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

23 April 1975

Honorable James T. Lynn, Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This submits proposed legislation in accordance with Office of Management and Budget Circular No. A-19, revised. Enclosed are six copies of a draft bill, "To amend the National Security Act of 1947, as amended." Also enclosed are copies of a sectional analysis, a comparison with existing law, cost analysis, and drafts of the letters of transmittal to the President of the Senate and the Speaker of the House of Representatives.

The proposed legislation amends Section 102 of the National Security Act of 1947 by adding a new subsection (g) defining "information relating to intelligence sources and methods" as a separate category of information to be accorded statutory recognition and protection similar to that provided "Restricted Data" under the Atomic Energy Act. The proposed law recognizes the authority of the Director of Central Intelligence and the heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States, to limit the dissemination of information related to intelligence sources and methods of collection. It provides for a criminal penalty for the disclosure of such information to unauthorized persons and for injunctive relief.

The continued effectiveness of the United States foreign intelligence collection effort is dependent upon the adequate protection of the intelligence sources and methods involved. In recognition of this, Congress, under Section 102(d)(3) of the National Security Act of 1947, made the Director of Central Intelligence responsible for the protection of intelligence sources and methods from unauthorized disclosure. Unfortunately, there is no statutory authority to implement this responsibility. In recent times, serious damage to our foreign intelligence effort has resulted from unauthorized disclosures of information related to intelligence sources and methods. The circumstances of these disclosures precluded punitive criminal action.

In most cases, existing law is ineffective in preventing disclosures of information relating to intelligence sources and methods. Except in cases involving communications intelligence, no criminal action lies unless the information is furnished to a representative of a foreign power or the disclosure is made with intent to harm the United States or aid a foreign power. Except in the case of knowingly furnishing classified information to either a foreign government or a foreign agent, prosecution requires proof, to the satisfaction of the jury, that the information affects the national defense within the meaning of the statute. This can only be established by further public disclosure in open court which may aggravate the damage to the security and intelligence interests of the United States and raises an additional obstacle to prosecution. The difficulties imposed by these burdens substantially reduce the effectiveness of the general criminal statutes as a deterrent to unauthorized disclosure of sensitive intelligence sources and methods information.

The proposed legislation is aimed solely at persons who are entrusted with information relating to intelligence sources and methods through a privity of relationship with the U. S. Government. A fully effective security program might require legislation to encompass the willful disclosures of information requiring protection by all persons knowing or having reason to know of its sensitivity. However, in order to limit the free circulation of information in our American society only to the degree essential to the conduct of a national foreign intelligence effort, this legislation proposes that prosecution be provided only for persons who have authorized possession of such information or acquire it through a privity of relationship to the Government. Other persons collaterally involved in any offense would not be subject to prosecution. Further, disclosures to Congress upon lawful demand would be expressly excluded from the provisions of the proposed law.

In order to provide adequate safeguards to an accused, while at the same time preventing damaging disclosures during the course of prosecution, subsection (g)(7) provides for an in camera determination by the court to decide as a question of law the validity of the designation for limited distribution of the information upon which prosecution is brought. Also, under subsection (g)(4), prior to court action, the Attorney General and the Director of Central Intelligence must certify that the information was lawfully designated for limited distribution,

the information was not placed in the public domain by the Government, and there existed a procedure whereby the defendant could have had the information reviewed for possible public release. Further under subsection (g)(4), it is an affirmative defense if the information was lawfully provided to a Committee of Congress, or if the defendant did not know or had no reason to know that the information had been specifically designated for limited distribution.

Finally, in order to prevent disclosures authority is provided in subsection (g)(6) for the courts to enjoin those to whom the proposed legislation otherwise applies upon the Attorney General's application and showing that the person is about to make an unauthorized disclosure.

Your advice is requested as to whether there is any objection to the submission of the proposed legislation to the Congress from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

Enclosures

A BILL

To amend the National Security Act of 1947, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 102 of the National Security Act of 1947, as amended, (50 U.S.C.A. 403) is further amended by adding the following new subsection (g):

(g) In the interests of the security of the foreign intelligence activities of the United States, and in order further to implement the proviso of section 102(d)(3) of this Act that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure--

(1) Whoever, being or having been in duly authorized possession or control of information relating to intelligence sources and methods, or whoever, being or having been an officer or employee of the United States, or member of the Armed Services of the United States, or a contractor of the United States Government, or an employee of a contractor of the United States Government, and in the course of such relationship becomes possessed

of such information, knowingly communicates it to a person not authorized to receive it shall be fined not more than $5,000 or imprisoned not more than five years, or both;

(2) For the purposes of this subsection, the term "information relating to intelligence sources and methods" means sensitive information concerning--

(A) methods of collecting foreign intelligence;

(B) sources of foreign intelligence, whether human, technical, or other; or

(C) methods and techniques of analysis and evaluation of foreign intelligence which, in the interests of the security of the foreign intelligence activities of the United States, has been specifically designated for limited or restricted dissemination or distribution, pursuant to authority granted by law or Directive of the National Security Council, by a department or agency of the United States Government which is expressly authorized by law or by the President to engage in intelligence activities for the United States;

(3) A person who is not authorized to receive information relating to intelligence sources and methods is not subject to prosecution as an accomplice within the meaning of sections 2 and 3 of Title 18, United States Code, or to prosecution for conspiracy to commit an offense under this subsection, unless he became possessed of such information in the course of a relationship with the United States Government as described in paragraph (1); Provided, however, That the immunity conferred by this paragraph does not preclude the indictment or conviction for conspiracy of any person who is subject to prosecution under paragraph (1) of this subsection.

(4) No prosecution shall be instituted under this subsection unless, prior to the return of the indictment or the filing of the information, the Attorney General and the Director of Central Intelligence jointly certify to the court that at the time of the offense--

(A) the information was lawfully designated for limited or restricted dissemination or distribution within the meaning of paragraph (2) of this subsection;

(B) the information had not been placed in the public domain by the United States Government; and

(C) there existed a review procedure through which the defendant could obtain review, by the Government agency described in paragraph (2) of this subsection, of the necessity of continuing the designation described in paragraph (2) of this subsection in the interests of the security of the foreign intelligence activities of the United States.

(5) It is an affirmative defense to a prosecution under this subsection that--

(A) the information was communicated only to a regularly constituted subcommittee, committee or joint committee of Congress, pursuant to lawful demand, or

(B) the person communicating the information did not know or have reason to know that the information had been specifically designated as described in paragraph (2) of this subsection.

(6) Whenever in the judgment of the Director of Central Intelligence any person is about to engage in any

acts or practices which will constitute a violation of this subsection, the Attorney General, on behalf of the United States, may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing that such person is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

(7) In any judicial proceedings under this subsection, the court--

(A) may review, in camera, information relating to intelligence sources and methods designated for limited or restricted dissemination or distribution within the meaning of paragraph (2) of this subsection for the purpose of determining if such designation was lawful and the court shall not invalidate the designation unless it determines that the designation was arbitrary and capricious. The determination of the validity of such designation under the circumstances is a question of law;

(B) in any in camera review, may in its discretion, require the presence of all parties

or their attorneys and production of a record of the proceedings;

(C) shall, at the close of the in camera review, enter in the record an order pursuant to its findings and determination.

SECTIONAL ANALYSIS AND EXPLANATION

The draft bill by adding a new subsection (g) to the National Security Act of 1947 further implements a proviso of that Act imposing a duty upon the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. Where possible, the new subsection is based upon existing provisions of law specifically 18 U.S.C. 798 (relating to communication intelligence) and 42 U.S.C. 2204 et seq. (relating to atomic energy Restricted Data).

Paragraph (1) of the new subsection identifies the special and limited class of individuals having privity of access to the sensitive information defined in paragraph (2) below and proscribes their culpable communication of such information to an unauthorized recipient.

Paragraph (2) of the new subsection defines the special category of information relating to intelligence sources and methods which is subject to the new provisions. It also recognizes the authority of the Director and heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States, to provide for the appropriate designation of such information.

Paragraph (3) of the new subsection assures that only the special and limited class of individuals identified under paragraph (1) above will be subject to prosecution as a result of the violation of the new subsection. This is in keeping with the intent that the new provision penalizes as

unlawful only the conduct of those whose access to the designated information is dependent upon understandings arising out of a relationship involving trust and confidence. Collateral prosecution related to the violation of any other provision of law, however, is not vitiated by this paragraph.

Paragraph (4) of the new subsection provides that no prosecution shall be instituted unless the Attorney General and the Director of Central Intelligence first jointly certify to the court that the information was lawfully designated for limited dissemination; the information was not placed in the public domain by the Government; and a review procedure existed whereby the defendant could have secured a review of the information in question for a determination on public releasability.

Paragraph (5) of the new subsection provides an affirmative defense to prosecution if the information was provided to a congressional committee pursuant to law or the person communicating the information did not know or have reason to know, that the information had been designated for limited dissemination pursuant to paragraph (2).

Paragraph (6) of the new subsection permits the Attorney General to petition a court for the injunction of any act which the Director believes will violate any provision of the new subsection. This authority is intended to provide prompt judicial action to avoid damage to the U. S. foreign intelligence effort in circumstances where punitive criminal action alone, being necessarily ex post facto, may be inadequate in achieving the underlying objective of the legislation which is to protect intelligence sources, methods

and techniques from unauthorized disclosure.

Paragraph (7) of the new subsection provides for judicial review as a question of law of the validity of any designation made pursuant to paragraph (2) above. This will ensure that the designation is not applied arbitrarily or capriciously. It provides that the judicial review may be conducted in camera, with all parties and counsel present at the court's discretion, to preclude the disclosure of sensitive information in open court and avoid aggravating the damage to intelligence sources and methods.

CHANGES IN EXISTING LAW

Changes in existing law made by the draft bill are shown as follows: existing law in which no change is proposed is shown in roman; new matter is underscored.

NATIONAL SECURITY ACT OF 1947
as amended
(50 U.S.C.A. 403)

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TITLE I--COORDINATION FOR NATIONAL SECURITY

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CENTRAL INTELLIGENCE AGENCY

SEC. 102

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(g) In the interests of the security of the foreign intelligence activities of the United States, and in order further to implement the proviso of section 102(d)(3) of this Act that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure--

(1) Whoever, being or having been in duly authorized possession or control of information relating to intelligence sources and methods, or whoever, being or having been an officer or employee of the United States, or member of the Armed Services of the United States, or a contractor of the United States Government, or an employee of a contractor of the United States Government, and in the course of such relationship becomes possessed of such information, knowingly communicates it to a person not authorized to receive it shall be fined not more than $5,000 or imprisoned not more than five years, or both;

(2) For the purposes of this subsection, the term "information relating to intelligence sources and methods" means sensitive information concerning--

(A) sources of foreign intelligence, whether human, technical, or other;

(B) methods of collecting foreign intelligence; or

(C) methods and techniques of analysis and evaluation of foreign intelligence which, in the interests of the security of the foreign intelligence activities of the United States, has been specifically designated for limited or restricted dissemination or distribution, pursuant to authority granted by law or Directive of the National Security Council, by a department or agency of the United States Government which is expressly authorized by law or by the President to engage in intelligence activities for the United States;

(3) A person who is not authorized to receive information relating to intelligence sources and methods is not subject to prosecution as an accomplice within the meaning of sections 2 and 3 of Title 18, United States Code, or to prosecution for conspiracy to commit an offense under this subsection, unless he became possessed of such information in the course of a relationship with the United States Government as described in paragraph (1); Provided, however, That the immunity conferred by this paragraph does not preclude the indictment or conviction for conspiracy of any person who is subject to prosecution under paragraph (1) of this subsection.

(4) No prosecution shall be instituted under this subsection unless, prior to the return of the indictment or the filing of the information, the Attorney General and the Director of Central Intelligence jointly certify to the court that at the time of the offense--

(A) the information was lawfully designated for limited or restricted dissemination or distribution within the meaning of paragraph (2) of this subsection:

(B) the information had not been placed in the public domain by the United States Government; and

(C) there existed a review procedure through which the defendant could obtain review, by the Government agency described in paragraph (2) of this subsection, of the necessity of continuing the designation described in paragraph (2) of this subsection in the interests of the security of the foreign intelligence activities of the United States.

(5) It is an affirmative defense to a prosecution under this subsection that--

(A) the information was communicated only to a regularly constituted subcommittee, committee or joint committee of Congress, pursuant to lawful demand, or

(B) the person communicating the information did not know or have reason to know that the information had been specifically designated as described in paragraph (2) of this subsection.

(6) Whenever in the judgment of the Director of Central Intelligence any person is about to engage in any acts or practices which will constitute a violation of this subsection, the Attorney General, on behalf of the United States, may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing that such person is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

(7) In any judicial proceedings under this subsection, the court--

(A) may review, in camera, information relating to intelligence sources and methods designated for limited or restricted dissemination or distribution within the meaning of paragraph (2) of this subsection for the purpose of determining if such designation was lawful and the court

shall not invalidate the designation unless it determines that the designation was arbitrary and capricious. The determination of the validity of such designation under the circumstances is a question of law;

(B) in any in camera review, may in its discretion, require the presence of all parties or their attorneys and production of a record of the proceedings;

(C) shall, at the close of the in camera review, enter in the record an order pursuant to its findings and determination.

[redacted]

Senate and House
Transmittal Letters

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Honorable Nelson A. Rockefeller
President of the Senate
Washington, D. C. 20510

Dear Mr. President:

This letter transmits for the consideration of the Congress a draft bill to amend the National Security Act of 1947, as amended.

Over the years, serious damage to our foreign intelligence effort has resulted from the unauthorized disclosure of information related to intelligence sources and methods. In most cases, the sources of these leaks have been persons who were made privy to sensitive information by virtue of their relationship of trust to the United States Government. Deliberate breach of this relationship of trust to the detriment of the United States Government is subject only to partial legal sanction. In most instances prosecution lies only if the offender makes the unauthorized disclosure to a representative of a foreign power or the prosecution must show an intent to harm the U.S. or aid a foreign power. Moreover, in many instances the requirement to reveal in open court the significance of information disclosed is a deterrent to prosecution.

Presently, Section 102(d)(3) of the National Security Act of 1947, as amended, places a responsibility on the Director of Central Intelligence to protect intelligence sources and methods. However, no legal sanctions are provided for him to implement this responsibility. The legislation proposed in this draft bill would close this gap to the limited degree necessary to carry out a foreign intelligence program, but at the same time give full recognition to our American standards of freedom of information and protection of individual rights.

The proposed legislation recognizes the authority of the Director of Central Intelligence, and the heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States, to limit dissemination of information related to intelligence

sources and methods of collection and provides criminal penalty for the disclosure of such information to unauthorized persons.

The proposed legislation is limited to individuals entrusted with the sensitive information described in the legislation by virtue of their position as officer, employee, contractor, or other special relationship with the U. S. Government. Strictly from the standpoint of protecting the information, this legislation ideally would encompass willful disclosure to unauthorized persons by any person knowing, or having reason to know of its sensitivity. However, our American tradition would not permit a law sufficiently broad to apply to the media or other private citizens. Hence, application of the proposed legislation is limited to those given access to the information by virtue of their relationship to the Government.

In order to provide adequate safeguards to an accused, to prevent damaging disclosures during the course of prosecution, and to prevent prosecution with respect to information unreasonably designated, the legislation provides for in camera review by the court of the information disclosed to review and decide as a question of law the validity of the designation for limited distribution. Further, prior to court action, the Attorney General and the Director of Central Intelligence must certify that the information was lawfully designated for limited distribution, the information was not placed in the public domain by the Government, and there existed a procedure whereby the defendant could have had the information reviewed for possible public release. It is also an affirmative defense if the information was provided to a committee of Congress pursuant to law or if the defendant had no reason to know that the information was designated for limited distribution.

The legislation also provides for injunctive relief in those instances where unauthorized disclosure is threatened and serious damage to the intelligence collection effort would result.

We would appreciate early and favorable consideration of the proposed bill. The Office of Management and Budget has advised that there is no objection to presenting the proposed bill to the Congress from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Honorable Carl Albert
Speaker of the House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

This letter transmits for the consideration of the Congress a draft bill to amend the National Security Act of 1947, as amended.

Over the years, serious damages to our foreign intelligence effort have resulted from the unauthorized disclosure of classified information related to intelligence sources and methods. In most cases, the sources of these leaks have been persons who were made privy to sensitive information by virtue of their relationship of trust to the United States Government. Deliberate breach of this relationship of trust to the detriment of the United States Government is subject only to partial legal sanction. In most instances prosecution lies only if the offender makes the unauthorized disclosure to a representative of a foreign power or the prosecution must show an intent to harm the U. S. or aid a foreign power. Moreover, in many instances the requirement to reveal in open court the significance of information disclosed is a deterrent to prosecution.

Presently, Section 102(d)(3) of the National Security Act of 1947, as amended, places a responsibility on the Director of Central Intelligence to protect intelligence sources and methods. However, no legal sanctions are provided for him to implement this responsibility. The legislation proposed in this draft bill would close this gap to the limited degree necessary to carry out a foreign intelligence program, but at the same time give full recognition to our American standards of maximum feasible freedom of information and protection of individual rights.

The proposed legislation grants to the Director of Central Intelligence, and to the heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States, the authority to limit dissemination of information related

to intelligence sources and methods of collection and provides criminal penalty for the disclosure of such information to unauthorized persons.

The proposed legislation is limited to individuals entrusted with the sensitive information described in the legislation by virtue of their position as officer, employee, contractor, or other special relationship with the U. S. Government. Strictly from the standpoint of protecting the information, this legislation ideally would encompass willful disclosure to unauthorized persons by any person knowing, or having reason to know of its sensitivity. However, our American tradition would not permit a law sufficiently broad to apply to the media or other private citizens. Hence, application of the proposed legislation is limited to those given access to the information by virtue of their relationship to the Government.

In order to provide adequate safeguards to an accused, to prevent damaging disclosures during the course of prosecution, and to prevent prosecution with respect to information unreasonably designated, the legislation provides for in camera review by the court of the information disclosed to review and decide as a question of law the reasonableness of the designation for limited distribution. Further, prior to court action, the Attorney General and the Director of Central Intelligence must certify that the information was lawfully designated for limited distribution, the information was not placed in the public domain by the Government, and there existed a procedure whereby the defendant could have had the information reviewed for possible public release. It is also an affirmative defense if the information was provided to a committee of Congress pursuant to law or if the defendant had no reason to know that the information was designated for limited distribution.

The legislation also provides for injunctive relief in those instances where unauthorized disclosure is threatened and serious damage to the intelligence collection effort would result.

We would appreciate early and favorable consideration of the proposed bill. The Office of Management and Budget has advised that there is no objection to presenting the proposed bill to the Congress from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

COST ANALYSIS

This legislation does not involve any measurable costs. Any court costs to the Government would be more than offset by the savings that would result if the legislation deters the compromise of sensitive sources and methods which, if compromised, would require extensive and costly counteractions to mitigate the damage and to offset the advantages to the opposition.